

**Exhibit 1 – ORACLE’S REPLY IN SUPPORT OF ITS
MOTION FOR REASSIGNMENT OF MATTERS TO
MAGISTRATE JUDGE PEGGY A. LEEN, filed in *Rimini v.*
Oracle, Case No. 2:14-cv-01699-LRH-CHW**

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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

RIMINI STREET, INC.,
 Plaintiff,
 v.
 ORACLE INTERNATIONAL CORPORATION,
 Defendant.
 ORACLE AMERICA, INC., *et al.*,
 Counterclaimants,
 v.
 RIMINI STREET, INC., *et al.*,
 Counterdefendants.

And Related Cases

Case No. 2:10-cv-0106-LRH-VCF

ORACLE USA, INC.; ORACLE AMERICA,

Case No. 2:14-cv-01699-LRH-CWH

**ORACLE'S REPLY IN SUPPORT OF
 ITS MOTION FOR REASSIGNMENT
 OF MATTERS TO MAGISTRATE
 JUDGE PEGGY A. LEEN**

1 INC.; and ORACLE INTERNATIONAL
CORPORATION,

2 Plaintiff,

3 v.

4 RIMINI STREET, INC. and SETH RAVIN,

Defendants.

5 **Case No. 3:16-CV-00543-LRH-CWH**

6 COLBECK CAPITAL MANAGEMENT,

7 Third-Party Movant,

8 v.

9 ORACLE INTERNATIONAL CORPORATION
and ORACLE AMERICA, INC.,

10 Respondents.

1 **I. INTRODUCTION**

2 At the outset of this case, the parties agreed that assignment of this case to Magistrate
3 Judge Peggy A. Leen would effect a savings of judicial effort and other economies, and would
4 diminish the likelihood of inconsistent results. That is why they stipulated to her presiding over
5 this matter. *See* ECF No. 48 (Stipulated Discovery Plan & Proposed Scheduling Order).¹

6 In its Response To Oracle’s Motion For Reassignment Of Matters To Magistrate Judge
7 Peggy A. Leen (“Response”), Rimini does not contend that these interests would no longer be
8 served by reassignment of this matter to Judge Leen. Instead, Rimini now argues that (i)
9 Oracle’s motion is improper because it contradicts the random assignment process for magistrate
10 judges (Response at 4:9-28) and (ii) Judge Leen’s recusal is somehow “permanent” and cannot
11 be undone (*id.* at 5:1-27). Rimini’s arguments are without merit.

12 As Oracle demonstrated in its motion, unless circumstances arise during the
13 reappointment process which would call into question a judge’s impartiality, recusal is
14 temporary under Advisory Opinion No. 97. Rimini’s contention that recusal is *per se* permanent
15 guts the Advisory Opinion’s guiding principle, that recusal is required “*only during that period*
16 *of time when the reappointment is under consideration by the panel and the court*” (emphasis
17 supplied).

18 There has been no suggestion or showing that Judge Leen’s resumed tenure of this case
19 would subject any party to bias or lack of impartiality, and Oracle respectfully requests this
20 matter be reassigned to Judge Leen.² The same reasons that counseled in favor of her *original*

21 ¹ All “ECF” cites are to this docket (“*Rimini II*”) unless otherwise indicated.

22 ² With this motion, Oracle also seeks reassignment of two related cases to Judge Leen:
23 *Oracle v. Rimini*, Case No. 2:10-cv-00106 (D. Nev.) (“*Rimini I*”), and *Colbeck v. Oracle*, Case
No. 3:16-cv-00543 (D. Nev.) (“Colbeck’s Motion to Quash”).

24 Regarding reassignment of *Rimini I*, the Court already has found that *Rimini I* and *Rimini*
25 *II* are related cases and that judicial economy would be served by assigning both cases to Judge
Hicks and Magistrate Judge Leen. *See* ECF No. 52. Moreover, Judge Leen has extensive
26 experience adjudicating *Rimini I*, which has been pending since 2010, and, there remain
unresolved issues which may necessitate enforcement or other post-judgment proceedings. *See,*
27 *e.g., Rimini I*, ECF No. 1049 (granting Oracle’s motion for permanent injunction and awarding
Oracle prejudgment interest and attorneys’ fees).

28 Regarding Colbeck’s Motion to Quash, it concerns the enforcement of a subpoena Oracle
served in *Rimini II*, where Colbeck filed its motion to quash in the Southern District of New
York and then stipulated to its transfer to this court pursuant to Federal Rules of Civil Procedure,
Rule 45(f). It is not really a separate “case” from *Rimini II*. *See* ECF No. 298 (Oracle’s notice

1 assignment should prevail, and reassignment will lead to further efficiencies as the parties
 2 proceed with discovery and prepare the case for trial.

3 **II. DISCUSSION**

4 **A. Judge Leen's Recusal Was Temporary**

5 Rimini's primary argument – that this case “has been permanently reassigned” (Response
 6 at 4:16-17) even where there has been no finding of bias or lack of impartiality – finds no
 7 support in the rules and is illogical, for several reasons.

8 First, *nothing* in General Order 2011-05 provides that reassignments are permanent. The
 9 General Order affords the Court with ample “discretion” to assign and re-assign matters and
 10 ensures the ongoing monitoring of all such assignments. General Order 2011-05 (“The Clerk of
 11 the Court shall monitor assignments and shall report the status of this process to the Chief Judge
 12 on a regular basis.”). No assignment or reassignment is ever permanent in the absolute sense,
 13 because cases and matters are always subject to reassignment, for various reasons. *See, e.g.*,
 14 *Ellis v. Palmer*, No. 3:12-CV-00099-RCJ, 2013 WL 876139, at *3 (D. Nev. Mar. 7, 2013)
 15 (reassignment due to retirement of judge); *In re Marshall*, 721 F.3d 1032, 1040 (9th Cir. 2013)
 16 (assignment was proper where “cases involved convoluted facts and issues, many of which had
 17 also been heavily litigated” in another court); *Schaffner v. Crown Equip. Corp.*, No. C 09-0284
 18 VRW, 2011 WL 311378, at *3 (N.D. Cal. Jan. 26, 2011) (reassigning case because the current
 19 judge would be unavailable in the near future); 28 U.S.C. § 636(f) (matter may be reassigned due
 20 to emergencies).

21 Second, Advisory Opinion No. 97 contemplates the very circumstance presented here –
 22 that “recusal would be required *only during that period of time when reappointment is under*
 23 *consideration* by the panel and the court” (emphasis supplied), and that matters like this one
 24 would be reassigned to the prior magistrate once her reappointment was confirmed. Rimini
 25 strains plain meaning to argue that this only “refers to the period of time when the judge must
 26 make the *initial* decision whether to recuse or not,” and that once the “initial decision” is made, it
 27 _____

28 of related cases). The motion to quash has been scheduled for hearing on the same day as two
 pending motions to compel in *Rimini II*.

“does not contemplate the reevaluation of a permanent recusal[.]” Response at 5:5-7. This is not what the Advisory Opinion says. Rimini does not – nor could it – cite any legal (or other) authority for this point as it directly contradicts the plain language of the Advisory Opinion. As the Advisory Opinion makes clear, “[f]ollowing reappointment, the disqualifying factor is removed and recusal is not necessary *unless, as previously noted, something occurred during the selection process* between a panel member and the incumbent that directly related to the incumbent’s ability to be, or to be perceived as being, fair and impartial in any case involving that panel member.” Advisory Op. No. 97 (emphasis supplied). Only in this circumstance would the Court need to independently evaluate the “particular facts of such a situation” to determine whether further recusal is warranted. *Id.* No party has even suggested that “something occurred during the selection process” to warrant continued recusal.³ *Id.*

Finally, Rimini asserts that the Court’s prior minute orders confirmed a reassignment for “all further proceedings.” Response at 2:9-13; 3:22-25; 4:5, 13-15; 5:15 (quoting ECF Nos. 224, 225). Of course they did, *while the need for recusal existed*. It no longer does. Moreover, the minute order should be interpreted to effectuate the purposes of the Advisory Opinion, and does not bind a court forever. If circumstances contemplated by the Advisory Opinion arise which counsel in favor of reassignment, the case should be reassigned. Here, Judge Leen’s reappointment has been confirmed, “the disqualifying factor [has been] removed,” and there is no prohibition on reassignment to Judge Leen.⁴ *See* Advisory Op. No. 97.

B. Oracle’s Motion To Reassign Is Proper

As Oracle explained in its motion, reassignment of this case (and *Rimini I*) to Judge Leen

³ Absent from Rimini’s opposition is any suggestion that Judge Leen’s impartiality has been called into question. Continued recusal is only warranted where “the judge’s impartiality might reasonably be questioned.” Canon 3(C)(1) of the Code of Conduct for United States Judges; *see also* 28 U.S.C. § 455(a). No such circumstances exist here: reassignment of this case was occasioned by the reappointment process itself, not by any finding or suggestion of bias or lack of impartiality. Neither party has revealed whether it, or both parties, disagreed with remittal, and there has been no suggestion, much less showing, of any event or action during the selection process that would call into question Judge Leen’s impartiality. There is simply no reason for further recusal.

⁴ Three motions are set for hearing on December 16, 2016 before Judge Hoffman. But other than ministerial acts like approval of *pro hac vice* applications and orders on motions to seal, there have been no other rulings or proceedings since Judge Leen’s recusal.

1 would promote judicial efficiency and consistency. Rimini does not argue otherwise. Judge
 2 Leen has six years of experience presiding over the same parties in this action (“*Rimini II*”) and
 3 the prior, related case, *Oracle v. Rimini*, Case No. 2:10-cv-00106 (D. Nev.) (“*Rimini I*”). It was
 4 for this reason that *both* parties agreed at the outset of *Rimini II* that “assignment of this matter
 5 to . . . Magistrate Judge Leen ‘would be likely to effect a savings of judicial effort and other
 6 economies, and [would] diminish the likelihood of inconsistent results.’” ECF No. 48
 7 (Stipulated Discovery Plan & Proposed Scheduling Order). That rationale has not changed.
 8 Both cases involve complex technical and legal issues which necessitate extensive discovery,
 9 and Judge Leen has gained extensive familiarity with the technologies and the issues, and made
 10 numerous substantive rulings regarding both the scope and the methods of discovery in both
 11 cases. *See, e.g., In re Indus. Gas Antitrust Litig.*, 1985 WL 2869, at *6 (N.D. Ill. 1985) (finding
 12 that assigning complex antitrust matter to judge who had already been presiding over case for
 13 five years furthered judicial economy).

14 Oracle’s motion is not – as Rimini argues – an attempt to “judge-shop” or co-opt the
 15 Court’s role in managing the assignment of magistrate judges. Response at 4:9-28. The local
 16 rules contemplate motions to transfer or consolidate cases where, as here, such
 17 transfer/consolidation would promote judicial efficiency. *See, e.g.*, LR 42-1.⁵ For this reason,
 18 courts routinely reassign cases for reasons of convenience, efficiency and economy. *See, e.g.*,
 19 *Ramirez v. Jimenez*, No. CV F 13-2085 AWI GSA, 2014 WL 12575805, at *1 (E.D. Cal. Jan. 7,
 20 2014) (because “actions involve the same or similar parties, properties, claims, events and/or
 21 questions of fact or law . . . assignment of the actions to the same district judge and magistrate
 22 judge will promote convenience, efficiency and economy”); *York v. Cty. of El Dorado*, 119 F.
 23 Supp. 2d 1106, 1107 (E.D. Cal. 2000) (case reassigned for “purposes of efficiency”); *Arline v.*
 24 *Clark*, No. 111CV00420LJOSABPC, 2016 WL 3411645, at *2 (E.D. Cal. June 20, 2016)
 25 (“assignment of the matters to the same district and magistrate judges is likely to effect a
 26 substantial savings of judicial effort and is also likely to be convenient to the parties”).

27 ⁵ *Cf.* D. Haw. Civ. R. 40.2 (parties may request that related cases be reassigned to the same
 28 judge); N.D. Cal. Civil L.R. 3-2(h) (party may motion to reassign case if “convenience of parties
 and witnesses and the interests of justice will be served”).

Returning a case to a magistrate who has six years of experience with the parties and the issues and whose recusal was brief enough that no substantive hearings or rulings have issued from her interim replacement is hardly “judge shopping.”

Nor is Oracle’s motion an attempt to “subvert the underlying purposes” of General Order 2011-05 governing assignment of magistrate judges. Response at 4:19-20. Just as motions to consolidate or relate cases are appropriate to promote efficiency, so too is this motion to reassign the case to a magistrate judge with long-standing experience with the parties and the issues presented by the case. In circumstances such as these, the Court has “broad discretion” to construe and apply general orders to “promote efficiency.” *United States v. DeLuca*, 692 F.2d 1277, 1281 (9th Cir. 1982); *United States v. Torbert*, 496 F.2d 154, 157 (9th Cir. 1974) (noting that a general order requiring random reassignment “is a housekeeping rule for the internal operation of the district court which has a large measure of discretion in interpreting and applying it”) (internal quotations omitted).

Oracle’s motion properly requests that the Court exercise its discretion to reassign this case (and *Rimini I*) to Judge Leen to bring her extensive, case-specific experience to bear in this matter as the case heads towards trial.

III. CONCLUSION

To promote overall judicial efficiency and in the absence of any countervailing showing, Oracle respectfully requests that this case (and *Rimini I*) be reassigned to Judge Leen.

DATED: November 11, 2016

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Frank Kennamer

Attorneys for Counterclaimant Oracle America,
Inc. and Defendant and Counterclaimant Oracle
International Corporation

CERTIFICATE OF SERVICE

I certify that on November 11, 2016, I electronically transmitted the foregoing ORACLE'S REPLY IN SUPPORT OF ITS MOTION FOR REASSIGNMENT OF MATTERS TO JUDGE PEGGY A. LEEN to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel are CM/ECF registrants.

DATED: November 11, 2016

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